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Can Congress Really Check

If Hill oversight fails on Nicaragua, it may

By Jay Peterzell

MEMBERS OF CONGRESS struggling to control the not-so-secret secret war against Nicaragua are learning an unpleasant lesson about their ability to monitor covert action: the current oversight system is inadequate even when it works, and it does not always work.

This American intervention in Central America presents the most serious test to date of the credibility of that oversight system, which was established by a series of laws passed during the last decade. If Congress proves unable to control this controversial covert operation, it is hard to imagine when it will effectively use its oversight powers.

But the system is neither so simple nor so straightforward that it can be easily exploited. There are ambiguities in the law that hinder effective congressional oversight, and there are large practical problems that get in the way of any attempt to curtail a secret operation overseas. Perhaps most important, Congress has yet to display any willingness to actually stand in the way of an operation that the administration of the day wants to conduct. Without congressional courage, oversight will never be significant.

The problems begin at a fundamental level: A number of members and staff of the House and Senate intelligence committees say they are not certain they are even informed of some types of secret operations. In a series of recent interviews, they described specific instances in which agencies had exploited loopholes in reporting requirements or even evaded those requirements altogether in ways that appeared to violate the law.

For example, intelligence and congressional sources said the Defense Department had conducted a number of clandestine intelligence activities without obtaining a "presidential finding" or informing the intelligence committees as required by law. The actions, which were said to have ended last year, were undertaken by an organization whose existence has never been reported previously — the Army Intelligence Support Activity, a secret organization set up during the 1980 Iran hostage crisis to support paramilitary and hostage-rescue operations worldwide.

One of the ISA's actions, the officials said, was to provide equipment and support for a 1981 attempt by former special forces Lt. Col. James (Bo) Gritz to organize a search for American prisoners of war thought to be still held in Laos. The organization was also said to have conducted operations in Central America.

Sources who discussed the existence of the ISA said they were satisfied that its illegal activities had ceased.

Even when Congress is fully informed, some members say they have few effective ways to react to covert operations of which they disapprove. "It is very frustrating to have so little leverage over the intelligence community," one member noted. "You don't have a veto, so you have to satisfy yourself by hollering inside the tin can."

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In recent interviews, intelligence committee members and current and former staff members and intelligence officials described the current system of congressional oversight. Many asked not to be identified. Their account is necessarily incomplete, both because of the sensitivity of some aspects of the subject and because, in the case of committee members and staff, they have no way of knowing that specific information has not been reported to them.

"Congressional oversight" of covert activities means that Congress is kept informed of these activities, and has the opportunity to influence them. Under the law, the executive branch must inform the House and Senate intelligence committees — in advance, except in dire circumstances — of all clandestine activities by U.S. operatives or their agents to influence events in foreign countries. Committee members can ask questions about these operations but cannot veto them. The law envisions a situation in which the executive branch takes seriously reservations that might be expressed by the committees, but in fact the executive does not have to respond to congressional misgivings. To stop a covert action, Congress has to cut off funds for it.

stopped. "The system works well when there's a consensus" between Congress and the president, a former staff member noted. "It is not set up to deal with disagreements."

A parallel monitoring track is provided by the budget review process, which includes a yearly secret but recorded vote on each covert operation. In addition to authorizing funds for these and other intelligence actions, the committees approve reprogramming of money and are informed of (but do not approve) withdrawals from the CIA's contingency fund. This power of the purse is often described as "the teeth" of oversight. But committee sources admit it has never been used to cut off a significant, ongoing covert action.

It's important to understand what congressional oversight does not mean, too. It does not mean that the CIA makes daily or weekly trips to Capitol Hill to solicit approval for all secret activities. Nor does it mean the CIA is eager to volunteer its secrets to the intelligence committees. This is often a tooth-pulling process, and sometimes the dentist can't see all the teeth.

It's also important to know a little of the intelligence community's terminology. The term "covert action" does not cover all of the secret activities of American intelligence agencies. If the purpose of some clandestine action is to gather intelligence — not to influence events — then it need not be reported beforehand to Congress.

Thanks to the clandestine war in Nicaragua, many of the problems of congressional oversight of intelligence activities are about to come to the forefront on Capitol Hill.

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